

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF AUGUST 13, 2021

Prepared on August 2, 2021

ITEM NUMBER: 10

SUBJECT: Consideration of Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order in the matter of Monterey One Water; Unauthorized Discharges of Untreated Wastewater in 2017, 2018, and 2019 (Proposed Order No. R3-2021-0051)

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KEY INFORMATION

Location: On February 20, 2017, January 19-20, 2018, and October 17, 2019, one wastewater treatment plant overflow and two sanitary sewer system overflows from Monterey One Water (M1W) to Monterey Bay and the Pacific Ocean occurred at the following locations:

- Wastewater treatment plant outfall approximately two miles offshore (2018 overflow)
- Sanitary sewer overflow near 15th Street and Ocean View Boulevard intersection in Pacific Grove (2017 overflow)
- Sanitary sewer overflow near 9th Street and Ocean View Boulevard intersection in Pacific Grove (2019 overflow)

Type of Discharge: Untreated domestic and municipal wastewater (sewage)

Estimated Volume: Approximately 3,036,337 gallons combined from three overflows

Existing Orders: Waste Discharge Requirements Order No. R3-2018-0017 (previously Order No. R3-2014-0013), National Pollutant Discharge Elimination System Permit CA0048551 (for the wastewater treatment plant), and Statewide Sanitary Sewer Systems General Order No. 2006-0003-DWQ (for the sanitary sewer overflows)

ACTION: Consider Proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2021-0051

SUMMARY

The Central Coast Water Board enforcement team prepared this staff report. Monterey One Water (M1W) owns and operates a regional wastewater treatment plant and is required to comply with Waste Discharge Requirements Order No. R3-2018-0017, National Pollutant Discharge Elimination System (NPDES) Permit CA0048551 (2018 WDR Order). Prior to April 1, 2019, the Central Coast Water Board regulated the facility via WDR Order No. R3-2014-0013 (2014 WDR Order), which remains active for the purposes of enforcement. M1W is responsible for complying with the WDR orders to properly manage, treat, and dispose of domestic and municipal wastewater.

The 2014 and 2018 WDR Orders prohibit M1W from discharging untreated or partially treated wastewater to waters of the United States. On January 19 and 20, 2018, M1W discharged approximately 2.8 million gallons of untreated domestic and municipal wastewater from the outfall of its wastewater treatment plant to Monterey Bay and the Pacific Ocean.

M1W also owns and operates a sanitary sewer collection system and is required to comply with the State Water Board's General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ (Statewide Sanitary Sewer Systems General Order). M1W is responsible for complying with the requirements in the Statewide Sanitary Sewer Systems General Order to ensure proper management of the sewer collection system (i.e., the sewer lines).

The Statewide Sanitary Sewer Systems General Order includes a prohibition that prevents M1W from discharging untreated or partially treated wastewater to waters of the United States. On two separate occasions, M1W discharged untreated domestic and municipal wastewater from its sewer collection system to Monterey Bay and the Pacific Ocean. The two separate discharges occurred on February 20, 2017 and October 17, 2019, and a total of approximately 167,000 gallons of sewage discharged to Monterey Bay and the Pacific Ocean due to these discharges.

The Central Coast Water Board enforcement team and M1W entered into confidential settlement discussions and agreed to resolve the violations by imposing an administrative civil liability against M1W in the amount of \$800,000. The Central Coast Water Board enforcement team and M1W agreed that M1W would pay \$10,000 to the State Water Pollution Cleanup and Abatement Account and \$790,000 toward a supplemental environmental project (SEP)¹. The enforcement team followed the State Water Board's Enforcement Policy and SEP Policy to determine the final penalty amount.

¹ A SEP is an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action to offset a portion of a civil penalty. The State Water Board supports the inclusion of SEPs in the settlement of an enforcement action, so long as the projects meet the criteria specified in the [State Water Board Policy on Supplement Environmental Projects \(SEP Policy\)](#).

Resolving these violations through inclusion of a SEP is expected to improve the operation of the Castroville Community Services District (CCSD) sewer collection system and reduce the potential for future sanitary sewer overflows to surface waters and the community, thereby protecting water quality and public health.

The proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2021-0051 (Settlement Agreement) is included as Attachment 1 and the Settlement Agreement includes the following attachments:

- Attachment A: Violation No. 1 Factor Consideration and Penalty Calculation Methodology
- Attachment B: Violation No. 2 Factor Consideration and Penalty Calculation Methodology
 - Attachment B, Appendix B1: Receiving Water Sampling Results Exceeding Ocean Plan Water Quality Objectives (WQO) or California Code of Regulations Title 17 Bacteriological Standards and Indicating Harm or Potential Harm to Present or Potential Beneficial Uses of Monterey Bay
- Attachment C: Violation No. 3 Factor Consideration and Penalty Calculation Methodology
 - Attachment C, Appendix C1: Receiving Water Sampling Results Exceeding Ocean Plan Water Quality Objectives (WQO) or California Code of Regulations Title 17 Bacteriological Standards and Indicating Harm or Potential Harm to Present or Potential Beneficial Uses of Monterey Bay
- Attachment D: Steps 6-10 Factor Consideration and Penalty Calculation Methodology for Violation Nos. 1, 2, and 3
- Attachment E: Private Lateral Rehabilitation Project for the Castroville Community Services District Supplemental Environmental Project Proposal
 - Attachment E, Attachments 1 through 4

DISCUSSION

Background

The Central Coast Water Board enforcement team and M1W entered into confidential settlement discussions to resolve the allegations surrounding one wastewater treatment plant and two sanitary sewer system overflows that reached Monterey Bay and the Pacific Ocean on February 20, 2017, January 19-20, 2018, and October 17, 2019. The overflows are summarized as follows:

- Violation No. 1: Unauthorized discharge from M1W's wastewater treatment plant ocean outfall approximately two miles offshore to waters of the United States on January 19 and 20, 2018, totaling 2,869,230 gallons.
- Violation No. 2: Unauthorized discharge from M1W's sanitary sewer system near the intersection of 15th Street and Ocean View Boulevard in Pacific Grove to waters of the United States on February 20, 2017, totaling 161,500 gallons.
- Violation No. 3: Unauthorized discharge from M1W's sanitary sewer system near the intersection of 9th Street and Ocean View Boulevard in Pacific Grove to waters of the United States on October 17, 2019, totaling 5,607 gallons.

Violations of Permit and Assessment of Liability

M1W is required to comply with the 2018 WDR Order and previously by the 2014 WDR Order because M1W owns and operates a wastewater treatment plant that discharges treated waste to waters of the United States. M1W has been regulated under WDR/NPDES permits since the 1970s. M1W is required to manage, treat, and dispose of treated wastewater to surface waters as authorized by the WDR orders and the federal Clean Water Act.

Discharge Prohibition II.D of the 2014 WDR Order was in effect when the wastewater treatment plant overflow alleged in Violation No. 1 occurred on January 19-20, 2018. Discharge Prohibition II.D provides "the overflow ... of wastewater from the Discharger's collection, treatment, or disposal facilities and the subsequent discharge of untreated or partially treated wastewater ... is prohibited."

M1W is also required to comply with the Statewide Sanitary Sewer Systems General Order, because M1W owns and operates a sanitary sewer collection system greater than one mile in length. M1W has been enrolled in the Statewide Sanitary Sewer Systems General Order since 2006. M1W is required to convey its untreated domestic and municipal wastewater to the M1W wastewater treatment plant for treatment before authorized discharge to surface waters.

Prohibition C.1. of the Statewide Sanitary Sewer Systems General Order provides "[a]ny SSO [sanitary sewer overflow] that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."

M1W allegedly violated Discharge Prohibition II.D of the 2014 WDR Order in Violation No. 1 and Prohibition C.1. of the Statewide Sanitary Sewer Systems General Order in Violations Nos. 2 and 3. M1W also allegedly violated California Water Code section 13376 and Clean Water Act section 301 in each of these instances by discharging a combined total of approximately 3,036,337 gallons of untreated domestic and municipal wastewater to Monterey Bay and the Pacific Ocean, both waters of the United States, without or in violation of an NPDES permit.

Water Code section 13385, subdivision (a) states that a discharger who violates California Water Code section 13376 or Clean Water Act section 301 is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an

amount not to exceed the sum of \$10,000 per day of violation and \$10 per gallon of waste discharged over 1,000 but not cleaned up.²

Following the requirements of the California Water Code and State Water Board Enforcement Policy, the Central Coast Water Board enforcement team considered a variety of factors relating to the overflows, including:

- The degree of toxicity of the discharge (also referred to as the physical, chemical, biological, or thermal characteristics of the wastewater prior to being discharged).
- The actual harm or potential harm to the beneficial uses of Monterey Bay and the Pacific Ocean.
- Susceptibility to cleanup or abatement (whether the discharges could be cleaned up, or whether the effects of the discharges could be abated).
- The estimated volumes of the discharges
- M1W's conduct in matters relevant to and preceding the discharges, such as oversight, proper precautions, or negligence that may have caused or contributed to the discharges (also known as culpability)
- M1W's cooperation in returning to compliance
- M1W's history of violations
- M1W's ability to pay the recommended liability
- Any economic benefit M1W may have realized in relation to the discharges

In Attachment 1 to this staff report, the proposed Settlement Agreement includes a detailed analysis of each violation's factors and the proposed total base liability amounts for Violation Nos. 1, 2, and 3. Attachment A includes details on Violation No. 1 and proposes a total base liability amount of \$1,524,032. Attachment B includes details on Violation No. 2 and proposes a total base liability amount of \$349,536. Attachment C includes details on Violation No. 3 and proposes a total base liability amount of \$43,297. The combined total base liability amount for Violation Nos. 1, 2, and 3 is \$1,916,865. However, the combined total base liability amount of \$1,916,865 does not consider the enforcement team's analysis of the Enforcement Policy's ability to pay and continue to do business and the economic benefits for each violation. Attachment D of the proposed Settlement Agreement includes a detailed analysis of these two factors for all three violations combined and includes the proposed final combined liability amount of \$800,000 based on an inability to pay the combined total base liability amount.

² The unauthorized discharge of untreated wastewater to Monterey Bay and the Pacific Ocean in violation of Prohibition C.1 of the Statewide Sanitary Sewer Systems General Order is subject to administrative civil liability under California Water Code section 13350. The Central Coast Water Board enforcement team elected to pursue enforcement of alleged Violation Nos. 2 and 3 pursuant to California Water Code section 13385.

Ability to Pay

As described in further detail in Attachment D to the proposed Settlement Agreement, M1W's ability to pay an administrative civil liability is determined by its income (revenues minus expenses) and net worth (assets minus liabilities). The combined total base liability amount (\$1,916,865) may be adjusted to address M1W's ability to pay or to continue in business if the Central Coast Water Board has sufficient financial information necessary to assess M1W's ability to pay the combined total base liability amount or to assess the effect of the combined total base liability amount on M1W's ability to continue in business.

The enforcement team retained financial experts from Industrial Economic, Incorporated (IEc) to analyze M1W's ability to pay. The analysis was based on M1W's Comprehensive Annual Financial Reports (CAFRs) for the fiscal years ending June 30, 2017, 2018, and 2019, as well as the Annual Budget for fiscal year 2021 (including preliminary fiscal year 2020 results) and the Statement of Net Position as of June 30, 2020, provided by M1W. For the analysis, IEc focused on the Statement of Revenues, Expenses and Changes in Net Position (income statement) and Statement of Net Position (balance sheet). IEc concluded that based on the M1W's financial data for fiscal years 2017-2020 and projections for fiscal year 2021, M1W does not have the ability to pay the proposed penalty in full.

M1W does not have the ability to pay a \$1.9 million penalty because the penalty is large relative to the M1W's cash holdings (11 percent), operating revenues (5 percent), and monthly bill per household (penalty per household of \$29.20 in addition to the current monthly bill of \$24.55). Further, the payment of the full proposed penalty may cause M1W to violate its bond covenants, based on the fiscal year 2021 forecasted accounting. It will also further drive down its working capital, leaving M1W with insufficient liquidity to cover its short-term obligations. Finally, the penalty payment must be balanced against M1W's upcoming state revolving fund loan payments, the substantial capital improvement projects (nearly \$100 million) M1W intends to undertake in the next ten years, its pension obligations (\$21.5 million), and the economic impacts and uncertainty of COVID-19. It should also be noted that M1W has been proactive in addressing its financial constraints. To control expenses during the pandemic, M1W implemented a hiring freeze on vacant position and implemented wage reductions or partial furloughs on all employees.

The enforcement team also evaluated the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. The minimum liability associated with economic benefit for Violation Nos 1, 2, and 3 were \$62,905. Therefore, the final combined liability amount of \$800,000 far exceeds the State Water Board's Enforcement Policy's requirement that states that the liability amount should be at least 10 percent higher than the economic benefit amount.

At the request of M1W, to further mitigate financial impacts to M1W, the enforcement team agreed to include a supplemental environmental project (SEP). The inclusion of

the SEP allows M1W to pay \$790,000 towards the SEP over an approximate two-year period, as opposed to the full \$800,000 being due to the State Water Pollution Cleanup and Abatement Account within 30 days of adoption of the Settlement Agreement.

Supplemental Environmental Project

The Water Code and Enforcement Policy allow dischargers to propose SEPs to offset a portion of an administrative civil liability. SEPs are environmentally beneficial projects that a discharger agrees to undertake with the approval of the regional board that would not be undertaken in the absence of an enforcement action. The Water Boards may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary ACL for completion of a SEP. The Central Coast Water Board enforcement team supports M1W's proposed SEP referred to as the Private Lateral Rehabilitation Project for the Castroville Community Services District (CCSD).

M1W's proposed SEP meets all SEP Policy requirements and is described in Attachment E of the proposed Settlement Agreement. The SEP proposes to inspect, repair, and replace defective privately-owned residential sewer laterals within disadvantaged community (DAC) areas in the CCSD's service area. The SEP will improve sewer laterals and the CCSD's sanitary sewer system integrity to reduce inflow and infiltration into and potential exfiltration out of the sewer system, benefiting the community and protecting local water quality and public health. The SEP also aims to decrease wet weather flows in CCSD's sanitary sewer system entering Castroville and Moss Landing pump stations and thereby decrease the potential for sanitary sewer overflows. The Castroville pump station is bordered by the Tembladero Slough, which connects to the Elkhorn Slough and ultimately the Monterey Bay National Marine Sanctuary. The Moss Landing pump station is bordered by the Old Salinas River Estuary and Moro Cojo Slough, which both connect to the Moss Landing Harbor and the Pacific Ocean.

The SEP is comprised of three main components: 1) system assessment, 2) program development, and 3) lateral rehabilitation. Of the proposed \$790,000 SEP amount, \$94,585 is budgeted for system assessment, \$63,515 for program development, and \$631,900 for lateral rehabilitation. M1W conducted an initial field assessment and identified 101 properties, all located in DAC areas, for inclusion in the project. The SEP system assessment will include access agreements, outreach to residents, and video assessment of the 101 sewer laterals to inform number and severity of possible defects. The SEP program development includes prioritizing laterals for rehabilitation based on severity of identified vulnerabilities and enrolling property owners in the program. Lastly, the SEP lateral rehabilitation component includes repairing the prioritized sewer laterals, at no cost to the property owners, and returning the disturbed areas to the original condition. The project also includes rehabilitation of adjacent manholes if warranted.

M1W plans to utilize a company specializing in Right-of-Way acquisitions to assist with property agreements and outreach. M1W also plans to implement two separate competitive bid processes to solicit and select contractors for the following project

components: 1) investigating condition of sewer laterals and 2) repairing the identified damaged sewer laterals. M1W plans to coordinate with the CCSD, Monterey County, and property owners and tenants throughout the project.

M1W proposes to complete the SEP within three years of Settlement Agreement adoption. M1W will report quarterly on the SEP progress and submit a final report after SEP completion.

The SEP Policy typically allows for the use of up to 50 percent of the total administrative civil liability for SEPs, excluding the Central Coast Water Board enforcement team's investigative and enforcement costs. However, there are provisions in the SEP Policy allowing the Director of the State Water Board Office of Enforcement to approve amounts above 50 percent of the total liability. In this case, the Director of the Office of Enforcement has approved the proposed SEP amount of \$790,000 to exceed 50 percent of the total administrative civil liability, because the SEP is located in and will benefit disadvantaged communities served by the CCSD. Completion of the SEP is scheduled for August 12, 2024. M1W will pay the remaining liability amount of \$10,000 to the State Water Pollution Cleanup and Abatement Account within 30 days of the Settlement Agreement's effective date.

Additional Projects Addressing Potential Headworks Failures

In addition to M1W's proposed SEP, M1W responded to the headworks operational, monitoring, and notification failures associated with the overflow as described in Violation No.1. M1W replaced the faulty electronic component in the headworks; revising control system programming; increasing the headworks overflow system retention capacity prior to discharging to the ocean outfall; installing an infrared camera at the headworks; installing real-time monitoring of wastewater levels with integrated notifications; and hiring consultants to conduct a detailed third-party analysis of the root causes of the overflow. These corrective actions were designed to increase M1W's ability to avoid overflows due to headworks failures.

Compliance History since the Alleged Violations

As of July 15, 2021, M1W's compliance history indicates that no overflows have occurred at the wastewater treatment plant since the January 2018 unauthorized discharge.

As of July 15, 2021, M1W's compliance history indicates that no sanitary sewer overflows due to similar causes leading to Violations Nos. 2 and 3 that discharged to surface waters have occurred since the October 2019 unauthorized discharge.

Proposed Settlement Agreement

The Central Coast Water Board enforcement team and M1W have agreed to settle the matter without administrative or civil litigation and present the Settlement Agreement included as Attachment 1 jointly to the Central Coast Water Board for consideration as

an Order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

Climate Change

The Central Coast faces the threat and the effects of climate change for the foreseeable and distant future. To proactively prepare and respond, the Central Coast Water Board has launched the Central Coast Water Board's Climate Action Initiative, which identifies how the Central Coast Water Board's work relates to climate change and prioritizes actions that improve water supply resiliency through water conservation and wastewater reuse and recycling; mitigate for and adapt to sea level rise and increased flooding; improve energy efficiency; and reduce greenhouse gas production. The Climate Action Initiative is consistent with the Governor's Executive Order B-30-15 and the State Water Board's Climate Change Resolution No. 2017-0012.

Central Coast Water Board staff will continue to work with M1W to ensure that M1W's wastewater treatment conveyance systems and treatment facilities are designed to prevent future unauthorized discharges with climate change in mind.

The proposed SEP will help contribute to building climate change resiliency. Climate change has resulted in larger, more intense, and more frequent storm events, contributing to increased flooding. More intense localized events creating more localized flooding in the area served by CCSD, which in turn may increase potential for inflow and infiltration into the CCSD's sanitary sewer system. Increased flows, above design standards, in the CCSD's sanitary sewer system have the potential to exceed Castroville and Moss Landing pump station capacities. If the sanitary sewer system cannot convey flows, the risk of wastewater overflowing into the environment and potentially releasing contaminants into communities, surface waterbodies, and groundwater increases. The proposed SEP is intended to build climate change resiliency by reducing potential for inflow and infiltration into the CCSD's sanitary sewer system and helping prevent sanitary sewer system overflows at the Castroville and Moss Landing pump stations that are in close proximity to surface waterbodies.

Human Right to Water

California Water Code section 106.3, subdivision (a) states: It is a policy of the State of California "that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes." On January 26, 2017, the Central Coast Water Board adopted Resolution No. R3-2017-0004, which affirms the realization of the human right to water and the protection of human health as the Central Coast Water Board's top priorities.

The proposed SEP is expected to decrease the exfiltration of sewage from damaged laterals to groundwater, helping protect CCSD's sole water supply and aligning with the human right to water. Ninety percent of the residents served by CCSD are within DAC areas and the residents do not have the resources to directly assess the impact private laterals have on the CCSD's water supply. By preventing wastewater from exfiltrating or

seeping out of the sewer collection system via rehabilitating the private laterals, there is an expected reduction in nutrient and other pollutant loading to the underlying shallow groundwater and a reduced potential for sewer overflows to surface waters. Further, a decrease in exfiltration and sewer overflows would allow conveyance of more wastewater to the M1W regional wastewater treatment plant for recycling. At M1W's regional wastewater treatment plant, wastewater is the primary source for the facility's water reuse efforts. The more wastewater that enters the facility, the more M1W can recycle wastewater for both non-potable and potable uses, contributing to human right to water implementation.

Disadvantaged Communities

The Central Coast Water Board implements regulatory activities and water quality projects in a manner that ensures the fair treatment of people of all ethnicities, cultures, backgrounds and income levels, including DACs. Additionally, the Central Coast Water Board is committed to providing all stakeholders the opportunity to participate in the public process and provide meaningful input to decisions that affect their communities.

The overflows from the wastewater treatment plant and sanitary sewer systems were not located in disadvantaged communities. The wastewater treatment plant overflow occurred approximately two miles offshore and both sanitary sewer system overflows occurred in Pacific Grove, not a disadvantaged community.

However, the proposed SEP will benefit households located in Castroville and Moss Landing, disadvantaged and severely disadvantaged communities, respectively. With median household incomes less than \$56,982, this is markedly less than the Monterey County median income of \$67,813. All the identified properties for this proposed SEP are located within these DAC areas. The proposed SEP includes repairing faulty sewer laterals at zero cost to customers within DAC areas served by CCSD, decreasing potential for sanitary sewer overflows in the community, and benefiting the local water quality. The proposed SEP also includes outreach, including a bilingual approach (English and Spanish), to educate residents in DAC areas served by CCSD of the system assessment process and potential participation in the proposed lateral rehabilitation project.

COMMENTS

The Central Coast Water Board enforcement team publicly noticed the proposed Settlement Agreement for 30 days from June 25, 2021 through July 26, 2021, and received no comments.

CONCLUSION

If adopted, this proposed Settlement Agreement would resolve violations associated with alleged unauthorized discharges from M1W's regional wastewater treatment plant and their sanitary sewer system that reached Monterey Bay and the Pacific Ocean in 2017, 2018, and 2019 by the imposition of administrative civil liability against M1W in the amount of \$800,000. The proposed liability fully eliminates any economic or unfair

competitive advantage M1W may have obtained through its noncompliance with its permits and creates a meaningful, specific, and general deterrent to M1W and similarly situated person(s) in the regulated community from committing same or similar violations. Resolving these discharge violations through inclusion of a SEP is expected to benefit DAC areas served by CCSD, decrease the potential for future sanitary sewer overflows in the Castroville area, benefit water quality, and protect drinking water resources and public health. The proposed Settlement Agreement complies with the Enforcement Policy and SEP Policy.

ATTACHMENT

1. Proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R3-2021-0051, including Attachment A, B, C, D, and E (*as described in the Summary section above*).

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